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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536

File: EAC 99 167 53391 Office: VERMONT SERVICE CENTER

Date: JAN - 6 2004

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

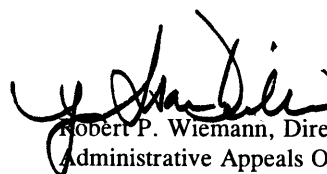
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, Vermont Service Center, on May 31, 2000. Based upon information received during the beneficiary's visa issuance interview, the director determined that the beneficiary was not eligible for the benefit sought. The director served the petitioner with a notice of his intent to revoke the approval of the petition, and the approval was ultimately revoked on July 10, 2002.

The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner operates a money remittance office. It has 10 employees, a gross annual income exceeding \$9,000,000, and seeks to employ the beneficiary as an administrative officer for a period of three years. The director revoked his approval of the petition on the ground that the proffered position failed to qualify as a specialty occupation.

On appeal, counsel submits a brief and additional information. Counsel asserts that the offered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical

sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The duties of the proffered position were detailed with the filing of the I-129 petition:

Job Description:

- Monitors, checks, supervises and evaluates daily remittance transactions;
- Insures that all currency transactions reports are filed with the Internal Revenue Service;
- Coordinates with and renders quarterly monetary transaction reports with the Commonwealth of Virginia [and] the State of Maryland;
- Renews yearly licenses with the Commonwealth of Virginia and the State of Maryland;
- Monitors exchange rates between the United States and the Philippines; sets daily floor and ceiling rates for Metro [] Manila and the provinces;

- Coordinates with American, Philippine city and provincial banks to ensure efficiency in the transfer of funds and its subsequent delivery to beneficiaries;
- Provides monthly, quarterly and yearly production reports; categorizes sales production into Virginia, Maryland, the District of Columbia and other areas in the U.S. and classifies them into Metro Manila, Luzon, Visayas and Mindanao in the Philippines[;]
- Translate[s] these reports into strategies and specific action plans to identify opportunities and problems in these markets;
- Coordinate[s] with the Company's accountant in the preparation of financial reports; [and]
- Assist[s] in [m]aintaining appropriate computer programs as to the flow of transactions; act as webmaster in the company's money transfer website, accepting money transfers through the internet.

Subsequent to the filing of the initiating petition, the director requested additional evidence. Specifically, the director asked that the petitioner provide: evidence as to the petitioner's level of business and need to expand its work force; a copy of the business lease, mortgage, or deed for the office where the beneficiary will be employed; evidence of the number of workers the petitioner employs in the United States with appropriate documentary evidence; and a list of other employees in similar positions with their educational backgrounds.

In response to the director's request for evidence, the petitioner stated that its business had increased by 89 per cent from 1997 - 1998, and that it anticipated a 30 per cent increase in business each year for the next five years. The petitioner provided documentary evidence requested by the director and stated that only one other employee with financial responsibilities had been employed in the past two years, and that individual held a Bachelor of Science Degree in Business Administration.

In revoking his approval of the I-129 petition, the director stated that the duties of the proffered position were not so complex as to require baccalaureate level education.

On appeal, counsel states that the duties to be assumed by the beneficiary were currently being performed by senior management personnel, both of whom hold bachelor's degrees. Counsel further

made reference to a California company that employed an administrative officer with a bachelor's degree and similar duties to those being offered to the beneficiary. Counsel asserts that the beneficiary's duties involve monitoring financial transactions that involve millions of dollars, with required government mandated reporting, and that a bachelor's degree is required for such responsibilities.

The duties assigned to the beneficiary appear to consist of general administrative and managerial responsibilities. It is difficult to determine from the limited job description provided precisely what functions the beneficiary will perform on a daily basis, and the complexity of those duties. As such, the petitioner has failed to qualify the offered position as a specialty occupation. Many management positions are filled by promoting experienced, lower level managers from within an organization. A college degree is not a minimum requirement for entry into the field of management. See *Occupational Outlook Handbook*, 2002-03 edition, (*Handbook*) at 87. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish any of the remaining criteria of the above cited regulation. The record does not indicate that: a degree requirement is common to the industry in parallel positions among similar organizations; the position is so complex or unique that it can be performed only by individuals with a degree; the petitioner normally requires a degree for the position; or the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four criteria enumerated 8 C.F.R. § 214.2(h)(4)(iii)(A) are present in this proceeding. It is, therefore, concluded that the petitioner has not established that the offered position qualifies as a specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.